next of kin become entitled, by the lapse of fourteen years from his disappearance, or of one year from the appointment of a temporary administrator when preceded by over thirteen years of absence. This statute, with comprehensive simplicity, provides at the same time for temporary conservation and administration, begun by a seizure of the property as well as by published notice. It has the added virtue that it applies expressly to both real and personal property.[22]

VALUATION OF PROPERTY OF PUBLIC SERVICE COMPANY AS BASIS FOR DETERMINING RATES. — That courts may regulate the rates of public service companies is unquestioned.[1] From decisions holding that rates may be reduced to any extent provided some compensation is secured to the company,[2] the law has changed so that at present a reasonable return on the property must be left.[3] What is a reasonable return is a judicial question; a court cannot establish rates at common law,[4] but may upset existing rates.[5]

Much confusion has existed regarding the proper basis of valuation upon which a reasonable return may be earned.[6] It is submitted that this is due to the failure to appreciate the distinction between the case of a protest against rates established by the company, and the company's attack on the rates promulgated by a legislature or commission. Rates, which allow no more than a fair profit upon the capital actually but properly and reasonably put into the business, should not be disturbed in the first class of cases; [7] but in the latter, rates are unreasonably low only when they take property without due process of law, and the property affected is not the original investment, but the existent property used by the company.[8] This distinction has not been taken generally, due perhaps to the fact that the mass of cases are of the latter type, which establish by the great weight of authority that the basis on which a return may be earned is the fair value of the property at the time it is

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[22] It is thus distinguished from most of the statutes, but the preliminary seizure of the property insures its constitutionality as a proceeding *in rem*. Pennoyer *v.* Neff, 95 U. S. 714. The statute as a whole is modelled on well-recognized legal analogies and it remedies a procedural defect whereby the inconclusiveness of mistaken adjudications of death works a hardship upon innocent parties which has caused much protest. See 14 AM. L. REV. 337; 22 CENT. L. J. 484; 10 HARV. L. REV. 62.

[1] Munn *v.* Illinois, 94 U. S. 113.

[2] Chicago & N. W. Ry. Co. *v.* Dey, 35 Fed. 866.

[3] Stanislaus County *v.* San Joaquin & King's River Canal & Irrigation Co., 192 U. S. 201, 24 Sup. Ct. 241.

[4] Osborne *v.* San Diego Land & Town Co., 178 U. S. 22, 20 Sup. Ct. 860.

[5] Spring Valley Water Works *v.* City & County of San Francisco, 124 Fed. 574.

[6] In Brymer *v.* Butler Water Co., 179 Pa. St. 231, 36 Atl. 249, the proper basis was held to be the actual cost of the plant to the owners, and this decision has been followed in Coal & Coke Ry. Co. *v.* Conley & Avis, 67 W. Va. 129, 67 S. E. 613; in San Diego Water Co. *v.* City of San Diego, 118 Cal. 556, 50 Pac. 633; and in City of Wilkes-Barre *v.* Spring Brook Water Supply Co., 4 Lack. Leg. N. (Pa.) 367. In Smyth *v.* Ames, 169 U. S. 466, 18 Sup. Ct. 418, the basis is the actual value of the property. The cost of reproduction is the sole criterion in Steenerson *v.* Great Northern Ry. Co., 69 Minn. 353, 72 N. W. 713.

[7] BEALE & WYMAN, RAILROAD RATE REGULATION, § 339.

[8] 2 WYMAN, PUBLIC SERVICE CORPORATIONS, § 1112.

being used for the public.[9] A multiplicity of elements enters into such value: the actual cost of the plant, in considering which interest on the capital employed during the period of construction is a proper charge;[10] the value of the stocks and bonds; money expended in permanent improvements; the probable earning capacity under the particular rates in question.[11] A common method is to find the cost of reproduction less depreciation.[12] To take the cost of reproduction as the present value, without deducting for depreciation is unjustifiable.[13] It seems manifest that no allowance should be made because the cost of the present plant was enhanced by piece-meal construction, for upon reproduction this would be eliminated. A sum should be allowed for the "going-concern" value, for it is obvious that a plant fully equipped, doing business, and earning profits is more valuable than the physical elements of which it is composed. Where the establishment is being sold or condemned, all courts allow this value;[14] the strong tendency is to consider it when the reasonableness of rates is in issue.[15]

Given the basis for a reasonable return before any question of profit is considered, all jurisdictions permit the company to earn the fixed charges of the business, and costs of maintenance and operation.[16] Whether a sum may be earned annually for depreciation has produced some conflict, but the weight of authority properly allows it.[17] Every plant depreciates in value, and good business policy demands a replacement fund out of the earnings.

As to profits, the courts have become united in deciding that the rate of return must depend upon the character of the investment,[18] the risk,[19] the return on similar enterprises in the same community,[20] and the prevailing[21] and legal rate of interest.[22] It is important here to distinguish between the two types of cases already referred to.[23] The percentages allowed by the courts have generally been reasonable, and rarely so meagre as to repel investment or embarass the company in its opera-

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[9] Willcox *v.* Consolidated Gas Co., 212 U. S. 19, 29 Sup. Ct. 192.

[10] Steenerson *v.* Great Northern Ry. Co., *supra.*

[11] Smyth *v.* Ames, *supra.*

[12] See Gloucester Water Supply Co. *v.* City of Gloucester, 179 Mass. 365, 382, 60 N. E. 977, 981.

[13] City of Knoxville *v.* Knoxville Water Co., 212 U. S. 1, 29 Sup. Ct. 148.

[14] Brunswick & Topsham Water District *v.* Maine Water Co., 99 Me. 371, 59 Atl. 537; Norwich Gas & Electric Co. *v.* City of Norwich, 76 Conn. 565, 57 Atl. 746.

[15] See Missouri, etc. Ry. Co. *v.* Love, 177 Fed. 493, 496. *Contra*, Cedar Rapids Water Co. *v.* City of Cedar Rapids, 118 Ia. 234, 91 N. W. 1081.

[16] Brymer *v.* Butler Water Co., *supra.*

[17] City of Wilkes-Barre *v.* Spring Brook Water Supply Co., *supra*; Long Branch Commission *v.* Tintern Manor Water Co., 70 N. J. Eq. 71, 62 Atl. 474. *Contra*, Cedar Rapids Water Co. *v.* City of Cedar Rapids, *supra.*

[18] San Diego Water Co. *v.* City of San Diego, *supra.*

[19] Coal & Coke Ry. Co. *v.* Conley & Avis, *supra.*

[20] Missouri, etc. Ry. Co. *v.* Love, *supra.*

[21] Central of Georgia Ry. Co. *v.* R. Commission of Alabama, 161 Fed. 925.

[22] Brymer *v.* Butler Water Co., *supra.*

[23] It is obvious that whether the rates established by the company are so high that they may be considered unreasonable, is a very different question from whether the rates fixed by a commission are so low as to deprive the company of its property without due process of law.

tions.[24] A recent case contains an unusually sound discussion of these principles. *Pioneer Tel. & Tel. Co.* v. *Westenhaver*, 118 Pac. 354 (Okl.).

ADMIRALTY JURISDICTION OVER TORTS. — The maritime nature [1] of the dispute was the test of jurisdiction of the ancient French admiralty court from the earliest times in the case of both contracts and torts.[2] The English admiralty court was coeval with the French, drew its law from the same sources,[3] and like the French court exercised jurisdiction over all disputes of a maritime nature.[4] But superimposed on this strictly maritime jurisdiction was a territorial jurisdiction over all contracts made on the seas,[5] and all torts committed on the seas.[6] The reason for this territorial jurisdiction, unknown to the Continental law, was, perhaps, that, as at this time the English common-law courts had no cognizance of contracts [7] and torts [8] without their territorial jurisdiction, it was necessary that admiralty should take care of all torts happening on the high seas and all contracts made there. But the courts of common law soon became superior to the admiralty court in England and cut down this ancient bifold jurisdiction in two ways. 1. Now having cognizance of transitory actions, they took exclusive jurisdiction of all contracts [9] and torts [10] not of a maritime nature, happening on the seas.

[24] As illustrations of the manner in which the courts are handling the problem, see Cumberland Tel. & Tel. Co. *v.* R. Commission of Louisiana, 156 Fed. 823; Willcox *v.* Consolidated Gas Co., *supra*; Long Branch *v.* Tintern Manor Water Co., *supra*.

[1] "Maritime" in this connection means "connected with a vessel." See BENEDICT, ADMIRALTY, 4 ed., § 182. See also note 20, *infra*. The French view of "maritime nature" is more liberal. See the citations in note 2, *infra*.

[2] See French Maritime Ordinances of 1400, 1517, and 1681, which may be found in CLEIRAC, US ET COUTUMES DE LA MER, ed. 1788, 191; 1 VALIN, ORDONNANCE DE LA MARINE, ed. 1766, 124, 112, 120, 138, 140, 143; BENEDICT, ADMIRALTY, 4 ed., § 106.

[3] The immediate source of both was the Laws of Oléron. See 1 TWISS, BLACK BOOK OF THE ADMIRALTY, ed. 1871, ix, 88. See also CLEIRAC, US ET COUTUMES DE LA MER, 277, § xix.

[4] The Black Book shows that Admiralty had jurisdiction over certain maritime contracts. See 1 TWISS, BLACK BOOK OF THE ADMIRALTY, 68, 69, § 20. Also over all matters pertaining to admiralty by ancient law. *Ibid.* 83, § 35. This, it is submitted, included all torts of a maritime nature, though no summary of tort jurisdiction is contained in the Black Book. It is true that no instance of the assumption of jurisdiction over a maritime tort on land occurs in the Black Book; but it is submitted that this does not necessitate the conclusion that torts of this kind were not included, for the instances of torts in the Black Book are not numerous, and it may well be that the case of a vessel injuring a pier, which is about the only tort of a maritime nature that can occur on land, did not then arise. But see Story, J., in Thomas *v.* Lane, 2 Sumn. (U. S.) 1, 9, Fed. Cas. No. 13,902, p. 960.

[5] 1 TWISS, BLACK BOOK OF THE ADMIRALTY, 69, § 21.

[6] See Story, J., in De Lovio *v.* Boit, 2 Gall. (U. S.) 398, 406, Fed. Cas. No. 3,776, p. 421. See also 1 TWISS, BLACK BOOK OF THE ADMIRALTY, 45, § 4, 47, § 5, 55, § 14, 109.

[7] See Ward's Case, Latch 4.

[8] See Davis *v.* Yale, 2 Lutw. 946.

[9] Justice Story describes the process by which this was done in De Lovio *v.* Boit, 2 Gall. (U. S.) 398, 407–466, Fed. Cas. No. 3,776, pp. 421–441. The resultant limitation of contract jurisdiction is described in 2 BROWNE, CIVIL LAW AND ADMIRALTY LAW, 2 ed., 1802, 72, 94.

[10] The adjudications depriving admiralty of jurisdiction over non-maritime torts